

# WHY MICHIGAN NEEDS A CONSTITUTIONAL EQUALITY AMENDMENT

Equal treatment under the law is a basic and fundamental value of American democracy.

## THE PROBLEM

- Michigan's 1963 Constitution, Article I, Section 2, bars discrimination on the basis of religion, race, color and national origin, **BUT NOT SEX**.
  - An amendment to the Michigan Constitution in 2006 **ONLY** bars sex discrimination or preference in public employment, public education, and public contracting.
  - Although Michigan's inheritance laws are sex-neutral, Michigan's 1963 Constitution, Article X, Section 1 gives **WIDOWS BUT NOT WIDOWERS** the right to inherit a life estate in the deceased spouse's property. A Constitutional Equality Amendment would have the effect of making this provision sex-neutral.
- Michigan's civil rights statute **ONLY** bars sex discrimination in employment, education, housing, public service, and public accommodations.
  - Despite current laws barring discrimination on the basis of sex and despite much progress in eliminating disparities in treatment of men and women, there is ample evidence of remaining inequality between men and women in Michigan.

## FACTORS TO CONSIDER

- Constitutional equality based on sex is contained in 23 other state constitutions. The latest is Oregon, which adopted it in 2014.
  - Some state courts track federal 14<sup>th</sup> Amendment (equal protection) theory in interpreting their provision, thus giving sex classifications intermediate scrutiny.
  - Other state courts have expanded the meaning to give sex classifications strict scrutiny, making sex a suspect classification justified only by a compelling state interest that is narrowly tailored to meet that interest.
  - These state courts are trying to remedy the inadequacies of the Federal Constitution's protections against state-sponsored sex discrimination.
  - Usually the state courts apply equal protection standards to government actions, not the private sector or personal privacy matters.
- There is no taxpayer cost to inclusion of sex in Michigan's equal protection clause other than the cost of putting it on the ballot for a vote.
- A Constitutional Equality Amendment would give men and women in Michigan one more avenue to remedy sex discrimination that might not fall under state statute.
  - The roles of men and women in society have changed considerably in recent decades and our Constitution needs to reflect that.
  - Michigan needs to bring its constitution into the 21st century by adding "sex" to its equal protection clause.



The American Association of University Women of Michigan's mission is to advance equity for women and girls through advocacy, education, philanthropy, and research

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